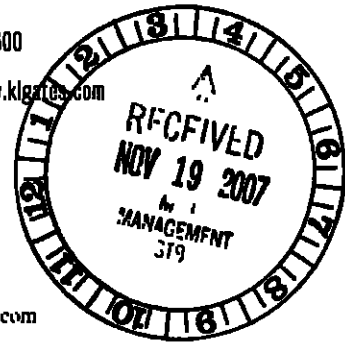


November 19, 2007

220722

Brendon P. Fowler
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BY HAND

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

NOV 19 2007

Part of
Public Record

**Re: STB Finance Docket No. 35087
Canadian National Railway Company and Grand Trunk Corporation –
Control – EJ&E West Company**

Dear Secretary Williams:

Enclosed for filing is the original and 11 copies of the Reply of the Village of Barrington, Illinois, on behalf of itself and the surrounding townships and municipalities that rely on Barrington for essential services, to the Railroad Control Application and the Petition Suggesting Procedural Schedule filed on October 30, 2007 by the Canadian National Railway Company and the Grand Trunk Corporation in the above-captioned proceeding. This Reply has been served on all Parties of Record pursuant to the Certificate of Service provided therein.

Please acknowledge receipt of this letter by date-stamping the acknowledgement copy and returning it to our messenger.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Brendon P. Fowler".

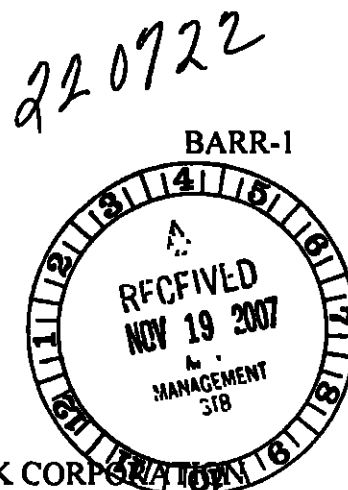
Brendon P. Fowler

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No 35087

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION
- CONTROL -
EJ & E WEST COMPANY

**REPLY OF THE VILLAGE OF BARRINGTON TO THE RAILROAD CONTROL
APPLICATION AND PETITION SUGGESTING PROCEDURAL SCHEDULE OF
CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION**



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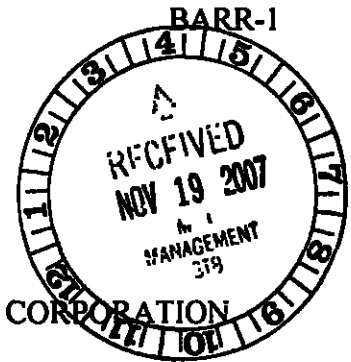
**ATTORNEYS FOR
THE VILLAGE OF BARRINGTON,
ILLINOIS**

Dated: November 19, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION
- CONTROL -
EJ & E WEST COMPANY



**REPLY OF THE VILLAGE OF BARRINGTON TO THE RAILROAD CONTROL
APPLICATION AND PETITION SUGGESTING PROCEDURAL SCHEDULE OF
CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION**

I. INTRODUCTION

Pursuant to 49 C.F.R. § 1104.13, the Village of Barrington, Illinois ("Barrington"), on behalf of itself and the surrounding townships and municipalities that rely on Barrington for essential services (collectively the "Barrington Community"),¹ hereby submits this reply to the Railroad Control Application (the "Application") and the Petition Suggesting Procedural Schedule filed on October 30, 2007 by the Canadian National Railway Company and the Grand Trunk Corporation (collectively, "CN" or the "Applicants") For the reasons set forth below, Barrington respectfully submits that the transactions contemplated by Applicants (collectively, the "CN Transaction" or "Transaction") will have a foreseeable and significant impact on the environment and that, in order to meet the requirements of the National Environmental Policy Act ("NEPA"),² the Surface Transportation Board ("STB" or the "Board") must prepare an Environmental Impact Statement ("EIS") in connection with its review of the Application.

¹ The Barrington Community consists of the Villages of Barrington, Barrington Hills, Deer Park, Lake Barrington, North Barrington, South Barrington and Tower Lakes, and Barrington and Cuba Townships

² Codified at 42 U.S.C. §§ 4321-43 (2006).

II. STATEMENT OF FACTS

Barrington (population 10,000), the commercial hub of the Barrington Community, has single and multi-family dwellings as well as offices, schools, churches, shops and a Metra commuter train station. Barrington is located 35 miles northwest of Chicago. The Barrington Community, with a population in excess of 30,000 residents, is predominantly a single family residential area with large tracts of open space including marsh, wetlands and parks. The Barrington Community's planning goal for over thirty seven years, since the inception of the Barrington Area Council of Governments, has been to "strike a balance between conservation, preservation and development."³ As a result of following this tenet the 90 square mile Barrington Community is unique for its beauty, character and protected open spaces.

The EJ&E Line traverses Barrington through its center.⁴ Over the decades the EJ&E Line has been a light density railroad with very few trains passing through Barrington. The EJ&E Line crosses four roads and the Metra train line at grade within a span of 5,918 feet within Barrington's village limits. The most easterly crossing in Barrington is at the entrance to a new 55 acre park, recently purchased and redeveloped with taxpayer funds. Moving westward through Barrington, the next two roads crossed by the EJ&E are very busy highways--U.S. Route 14, with about 32,000 trips per day, and Illinois Route 59 (a strategic regional arterial), with about 22,000 trips per day.⁵ After crossing Route 59, the EJ&E Line crosses the Union Pacific line before crossing the fourth road, Lake Cook Road/Main Street (about 18,000 trips per day), very near Barrington High School. Many of the 3,000 students who attend the high school walk or drive to and from school each day, or into the village center after school, across the EJ&E Line.

³ BACOG Regional Plan p.10, *available at* <http://www.bacog.org/comprehensiveplan/overview.html>

⁴ See Barrington area Map attached as Exhibit 1.

⁵ These traffic counts were made by the Village of Barrington in November of 2007.

In the Application, CN seeks authority to acquire control of the EJ&E West Company (“EJ&EW”), presently a wholly-owned non-carrier subsidiary of Elgin, Joliet & Eastern Railway Company (“EJ&E”), after EJ&EW acquires the land, rail and related assets of the EJ&E generally between Waukegan, IL southwest through Barrington to Joliet, and then east to Gary, Indiana (the “EJ&E Line”).⁶ CN is one of the largest Class I railroads in North America, and the only freight railroad that spans from the Pacific Ocean to the Atlantic Ocean and down to the Gulf of Mexico. As noted, the segment of the EJ&E Line that runs through Barrington is a light density railroad line.⁷ According to the Application, CN will add 15 trains per day to the EJ&E Line through Barrington, taking it from 5.3 trains per day to 20.3 trains per day.⁸ The Transaction is an effort by CN to increase freight railroad network efficiencies on all current and future CN traffic moving through Chicago. In other words, CN will use the EJ&E Line as a Chicago by-pass route.⁹

CN President & CEO E. Hunter Harrison calls the EJ&E Line the “missing link” that will connect CN’s five existing lines in Chicago.¹⁰ The Transaction will, according to Mr. Harrison, “reduce rail traffic congestion, increase rail capacity for carriers operating in Chicago, and reduce traffic density in Chicago’s urban core, with its resulting vehicular/train interference.”¹¹ Mr. Harrison

⁶ See Application, at 13-14.

⁷ The Application indicates that the EJ&E Line in question (Leighton to Spaulding) had base traffic of 5.3 trains per day in 2006. See Application, Attachment A.2, at 247.

⁸ *Id*

⁹ In addition, CN plans to use the EJ&E Line to make improved direct connections with at least four other Class I railroads – BNSF Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company. See Verified Statement of David L. Novak (the “Novak V S”), at 205

¹⁰ Verified Statement of E. Hunter Harrison (the “Harrison V.S.”), at 51.

¹¹ Harrison V S, at 52.

publicly stated that the Transaction will “change significantly [CN’s] whole U S. network”.¹² He also indicated in a September 26, 2007 Press Release that “[T]his acquisition not only will give CN an opportunity to expand its service to the North American steel industry, but also will drive new efficiencies and operating improvements on CN’s network.”¹³ According to James M Foote, CN Executive Vice-President, Sales & Marketing, “the EJ&E is [the equivalent of Interstate] 294, it goes around the city. ... This again does a couple of things. First and most importantly, it will allow us to improve the quality of our product: our reliability and our speed to market will be improved. We have estimated we could be 24 hours faster from Western Canada in to and through Chicago.”¹⁴

The Chicago by-pass will help CN grow its freight business. One good example of such growth is intermodal traffic between the Port of Prince Rupert, British Columbia (“PPR”) and the Midwestern U.S. PPR is the deepest natural harbor in North America, with sufficient clearance for container ships with capacity up to 12,000 twenty-foot equivalent units (“TEUs”). It is the shortest route (both in time and distance) between North America and all of the major Asian ports.¹⁵ CN collaborated with the Prince Rupert Port Authority and marine terminal operator Maher Terminals to design and build a new intermodal container facility in PPR, called the Fairview Container Terminal. Phase I of the Fairview Container Terminal opened on September 12, 2007. CN invested C\$25 million towards Phase I’s C\$170 million cost. According to CN and Maher, the Fairview Container Terminal

¹² Statements of E. Hunter Harrison, “CN to Acquire Key Operations of Elgin, Joliet and Eastern Railway,” CN Analyst Conference Call (September 26, 2007).

¹³ “CN to acquire key operations of Elgin, Joliet and Eastern Railway for US\$300 million”, CN Press Release (September 26, 2007), available at http://www.cn.ca/about/media/news_releases/2007/3rd_quarter/cn_News20070926.shtml.

¹⁴ Citigroup Transportation Conference, Statements of James M. Foote, CN Executive Vice-President, Sales & Marketing (November 6, 2007).

¹⁵ *Future North America Gateway Port. Prince Rupert*, Hong Kong Shipping Exchange Bulletin (September 11, 2007), at 2, 4-5, available at <http://www.rupertport.com/pdf/media/shipping%20exchange%20bulletin-future%20north%20america%20gateway%20port%20-%20prince%20rupert%20sept%202007.pdf>

is a new, exclusively rail-served container facility designed to be an “express gateway with unparalleled reliability, speed and efficiency to move . merchandise between the North American mid west and Asia.”¹⁶ The Fairview Container Terminal is served only by CN’s rail line and “follows the uncongested Northwest Transportation Corridor through the lowest rail grade in the Canadian Rockies and on to [the] rest of North America via Chicago.” Through PPR “[s]hippers can immediately access up to 80% of CN’s high capacity state-of-the-art Northern Line and benefit from the seamless integration of the full CN Rail network.”¹⁷ CN CEO Harrison has stated that the CN Transaction “will certainly, for one example, help us from a marketing standpoint with Prince Rupert to Memphis service, which is going to be so important to us. ... So this could have a substantial impact on transit times and certainly to the consistency.”¹⁸

A substantial portion of the PPR traffic will use the Chicago by-pass. CN has invested nearly a half-billion dollars since 2004 in a new intermodal terminal and upgrades to its existing rail yard in Memphis, TN.¹⁹ Mr. Harrison has stated that CN plans to downsize its seven primary yards in the U S to “focus on Chicago and Memphis,” and that Memphis will start receiving at least “a milelong train a day from Prince Rupert double stacked with import containers” by 2011.²⁰ These milelong trains will come through Barrington on their way to Memphis.

¹⁶ “Port of Prince Rupert Ship Has Come In,” Prince Rupert Port Authority Press Release (October 31, 2007), *available at* <http://www.rupertport.com/pdf/newsreleases/nrportofprincerupertshiphascomein.pdf>.

¹⁷ See <http://www.rupertport.com/advantages.htm>.

¹⁸ Statements of E. Hunter Harrison, “CN to Acquire Key Operations of Elgin, Joliet and Eastern Railway,” CN Analyst Conference Call (September 26, 2007).

¹⁹ “Canadian Executive Talks of Expanding Memphis Hub,” Commercial Appeal (October 4, 2007), <http://www.commercialappeal.com/news/2007/oct/04/transport-to-drive-growth/>.

²⁰ *Id*

The Fairview Container Terminal presently has an annual capacity of 500,000 TEUs. At least one economist has predicted that PPR could immediately divert 4% of all West Coast container traffic, and reach up to 10% with aggressive growth.²¹ Phase II of the Fairview Container Terminal, a C\$600 to C\$700 million project, is expected to open in the first quarter of 2011. Phase II will increase Fairview's container capacity to 2,000,000 TEUs.²² Plans are already under way for further expansion of container capacity (beyond Phase II of the Fairview Container Terminal) through a separate facility on Ridley Island. PPR estimates its increased capacity will "create an express pathway to the heartland of North America with a future capacity of 2 million TEUs and 4 million TEUs by 2015."²³ According to Don Krusel, President and CEO of the Prince Rupert Port Authority, the overall objective is to "grow the market share of the West Coast of British Columbia ports from 9.3 per cent to 17 per cent ... [t]his means that on the West Coast we have to go from 21 million containers to an estimated **nine million** containers by 2020."²⁴

CN's new and re-routed traffic over the EJ&E Line, which will add 15 trains per day to a line presently carrying about 5 per day according to the Application, will have a substantial adverse impact on the Barrington Community. Eight EJ&E Line grade crossings located in the Barrington Community will see significant increases in CN freight traffic, with related environmental impacts. Of

²¹ Nathan VanderKlippe, "Prince Rupert's Hope: Who's Laughing Now," *Financial Post* (September 12, 2007), available at <http://www.canada.com/nationalpost/financialpost/story.html?id=51a8666b-990d-4c84-9f47-309f95ed3869&k=4837>.

²² See http://www.cn.ca/specialized/ports_docks/prince_rupert/fairview/cn_KTPortsPrinceRupert_fairview.shtml.

²³ *Future North America Gateway Port: Prince Rupert*, Hong Kong Shipping Exchange Bulletin (September 11, 2007), at 1-2, available at <http://www.rupertport.com/pdf/media/shipping%20exchange%20bulletin-future%20north%20america%20gateway%20port%20-%20prince%20rupert%20sept%202007.pdf>.

²⁴ Leanne Ritchie, "Partners turn attention to Phase Two of port upgrade," *The Daily News* (July 10, 2007) (emphasis added), available at <http://www.rupertport.com/pdf/media/partners%20turn%20attention%20to%20phase%20two%20of%20fairview%20container%20terminal%20upgrade%20july%2010%202007.pdf>.

those eight crossings, four are located within the limits of the Village of Barrington. A single CN freight train – including the PPR intermodal train to or from Memphis – could block *all* traffic passing through the *entire* Village of Barrington simultaneously, including police, fire, and EMS vehicles. As further discussed below, proper evaluation of these and other potential environmental impacts requires the Board to prepare an EIS in connection with its review of the Application

III. ARGUMENT

A. THE BOARD MUST TAKE THE REQUISITE HARD LOOK AT THE CN TRANSACTION, AND MUST DEVELOP AN ENVIRONMENTAL IMPACT STATEMENT

1 Applicable Standard For An Environmental Impact Statement

Under NEPA, the STB must prepare an Environmental Impact Statement in this case if the CN Transaction may result in operational changes that will significantly affect the quality of the human environment. NEPA generally requires federal agencies to consider “to the fullest extent possible” environmental consequences “in every recommendation or report on major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Under both the NEPA implementing regulations of the President's Council on Environmental Quality (“CEQ”) and the Board's environmental rules, actions are separated into classes that prescribe the level of documentation required in the NEPA process. Actions that may “significantly” affect the environment generally require the preparation of a full EIS. 40 C.F.R. § 1501.4(a)(1); 49 C.F.R. § 1105.4(f). Actions that may or may not have a significant environmental impact ordinarily require the preparation of a more limited Environmental Assessment (“EA”) 40 C.F.R. § 1501.4(c); 49 C.F.R. §§ 1105.4(d), 1105.6(b).²⁵

²⁵ Actions whose environmental effects are ordinarily insignificant may be “categorically excluded” from NEPA review without a case-by-case review 40 C.F.R. §§ 1500.4(p), 1501.4(a)(2), 1508.4; 49 C.F.R. § 1105.6(c). The CN Transaction does not qualify for this categorical exclusion. Even CN's own traffic projections in the Application, which Barrington believes tell only the beginning of the story, exceed the thresholds for a categorical exclusion. *See* CN Application, at 33.

Under the CEQ's regulations, the term "significant" requires considerations of both context and intensity. 40 C.F.R. § 1508.27. "Context" means "that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality." *Id.* Both short- and long-term effects are relevant. *Id.* "Intensity" refers to the severity of the impact. *Id.* Aspects to be considered in evaluating intensity include public health and safety effects, unique characteristics of the geography such as park lands or prime farmland, historic areas, endangered species, or the extent to which the action may establish a precedent for future actions with significant effects or future considerations. *Id.* Whether an action is highly controversial or involves unique or unknown risks also bears on the "significant" finding and may compel the preparation of an EIS. 40 C.F.R. § 1508.27(4) & (5); *see, e.g., Sierra Club v. United States Forest Service*, 843 F.2d 1190, 1193 (9th Cir. 1988). Indeed, an action can be significant even if it has a largely beneficial effect on the environment, or is cumulative of several individually insignificant actions. 40 C.F.R. §§ 1508.27(1) & (7)

The CEQ regulations explain that environmental effects include both "direct effects" and "indirect effects." 40 C.F.R. § 1508.8. Indirect effects are those that "are caused by the action and are later in time or farther removed in distance, but still reasonably foreseeable." *Id.* An environmental effect is "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision." *Mid States Coalition for Progress v. S.T.B.*, 345 F.3d 520, 549 (8th Cir. 2003) (*citing Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992)). In *Mid States*, the Board's Section of Environmental Analysis ("SEA") examined the potential environmental effects resulting from an application by the Dakota, Minnesota & Eastern Railroad for authorization to construct and operate a rail line intended to haul coal from the Powder River Basin in Wyoming. The Eighth Circuit held that NEPA required the Board to consider not only the environmental effects of the railroad's constructing and operating the line, but also the environmental effects on air quality that might be expected as a result of an increased demand for coal by third parties. *Id.* at 548-49. The

court went on to explain that even though the full *extent* of a particular impact may be speculative, if the overall *nature* of the impact is foreseeable then it must be addressed in an EIS. *Id.* at 549 (although extent of new coal demand due to rail construction was speculative, it was “reasonably foreseeable - indeed, it is almost certainly true – that the proposed project will increase the long-term demand for coal and any adverse effects that result from burning coal.”).

2. The CN Transaction Will Result In Operational Changes That Significantly Affect The Quality Of The Human Environment

It is already clear that the CN Transaction will result in operational changes that significantly affect the quality of the human environment. CN, a Class I railroad with the most complete single-line network in North America, will use the light density EJ&E Line as a by-pass route for all current and future CN Chicago through-traffic between the U.S. and Canada. CN’s CEO calls the EJ&E Line the “missing link” in the CN network; he has said that the Transaction will “change significantly [CN’s] whole U.S. network.”²⁶

Almost all of the information in the Application was prepared to support CN’s assertion that the Transaction is a “minor” transaction²⁷ under the Board’s rules and therefore it focuses on 2006 traffic and other data under static assumptions geared towards rail competition issues.²⁸ Even so, the

²⁶ Harrison V.S., at 51, Statements of E. Hunter Harrison, “CN to Acquire Key Operations of Elgin, Joliet and Eastern Railway,” CN Analyst Conference Call (September 26, 2007)

²⁷ Barrington does not take any position at this time on whether the CN Transaction meets the requirements for a “minor” transaction under 49 U.S.C. § 11323 and 49 C.F.R. § 1180.2(b). Clearly, from the standpoint of the Barrington Community, this is a very important transaction.

²⁸ The Verified Statement of David A. Stuebner uses 2006 traffic data, and expressly assumes that “[t]he environment of the railroad industry is that which existed on December 31, 2006, except for the direct effect of the Transaction on traffic,” Verified Statement of David A. Stuebner (the “Stuebner V.S.”), at 193. By adopting these assumptions, Mr. Stuebner’s results necessarily exclude freight traffic growth.

Mr. Stuebner’s conclusions were used for preparation of the Operating Plan. *Id.* at 196, *see also* Novak V.S., at 201. A footnote on Attachment A.1 in the Operating Plan states that the “Base data reflects estimates of future intermodal traffic from and to Prince Rupert, BC.” *See* Application, at 246. CN representatives have informed Barrington that the base data on Attachment A.1 and the

Application does provide the beginning of the story with respect to the environmental impact of the CN Transaction.²⁹ Under CN's competition case assumptions and projections alone, Barrington will see an increase in traffic of about 15 freight trains a day. Other communities on the EJ&E Line will see increases of up to 26 freight trains per day.³⁰ These are significant, short-term, and direct regional and local impacts. The Board will need to take a hard look at the Application projections but also will need to look *beyond* the competition case projections in the Application and study the long-term environmental impacts of the CN Transaction, including the indirect effects of CN's acquisition.

Information set out in the Application, coupled with the information about PPR traffic, shows that the CN Transaction will result in significant changes at all levels – international, national, regional, and local. The Fairview Container Terminal at PPR will drive CN international freight traffic growth for years to come and likely will change the competitive balance among the U.S. and Canadian Pacific Coast ports. PPR will feed substantial traffic to CN's main line across Western Canada and down through Chicago to the rest of the United States. CN CEO Harrison has stated that the CN Transaction will help CN to develop the PPR service by cutting transit times and improving consistency.³¹ Mr. Harrison has also indicated that CN plans to "focus on Chicago and Memphis," and that Memphis will start receiving at least "a milelong train a day from Prince Rupert double stacked with import containers" by 2011.³² The Fairview Container Terminal in PPR now has annual capacity of 500,000 TEUs, but is expected to grow to 2 million TEUs by 2010, and to 4 million TEUs by 2015,

'Change' column on Attachment A.2 includes only two trains (one in each direction) for PPR traffic. Thus the Operating Plan has only limited relevance for the environmental evaluation.

²⁹ Application, at 32-33, 215-226.

³⁰ Application, Attachment A.2, at 247.

³¹ See *supra* p. 6-7.

³² "Canadian Executive Talks of Expanding Memphis Hub," Commercial Appeal (October 4, 2007), <http://www.commercialappeal.com/news/2007/oct/04/transport-to-drive-growth/>.

according to PPR estimates.³³ PPR could immediately divert 4% of all West Coast container traffic, and reach up to 10% with aggressive growth.³⁴

If one assumes for purposes of *illustration only* that PPR implements Phase II of the Fairview Container Terminal as scheduled, that the facility operates at 90 percent of capacity, that each train carries 400 TEUs and that there are an equal number of containers routed back to PPR (loaded or empty), then CN will run 4,500 trains per year to/from PPR beginning in 2011. That would be more than 12 new trains per day to or from somewhere and a substantial portion will run to/from points in the U.S. via CN's new Chicago by-pass.³⁵ Under the same other assumptions, if PPR builds out to 4 million TEUs as planned, CN would run 9,000 trains per year, or more than 24 trains per day to/from PPR beginning in 2015. One can quibble with the assumptions, but it is beyond any doubt that CN's U.S.-bound container traffic to/from Fairview could add a substantial number of trains to the EJ&E Line.

The Barrington Community urges the Board to review the projections and marketing presentations publicly offered by CN³⁶ and by the Port of Prince Rupert³⁷ in order to fully gauge the anticipated scope of CN's operations and planned investment in the by-pass route. Presentations developed by CN strongly emphasize the benefits that PPR operations will have on CN's overall network³⁸

³³ See *supra* p. 7-8.

³⁴ See *supra* p. 7

³⁵ PPR plans to complete Fairview Phase II in the first quarter of 2011, bringing capacity up to 2 million TEUs per year; at 90 percent capacity, Fairview would handle 1.8 million TEUs per year; that volume in 400 TEUs per train, would be 4,500 trains, or 12.32 trains per day.

³⁶ See http://www.cn.ca/specialized/ports_docks/prince_rupert/en_PrinceRupert.shtml.

³⁷ See <http://www.rupertport.com/container.php>.

³⁸ See http://www.unikron.com/tools/play/play_display.cgi?speed=hi&id=cn2

NEPA and its implementing regulations require the Board to prepare an EIS in order to fully consider both the foreseeable direct and indirect environmental impacts of the fully implemented CN Transaction. Indeed, there may be different or additional environmental impacts than those described here. An EIS would also provide a wide range of benefits to the Board and the public: a rigorous and objective analysis of alternatives and impacts, full public involvement, full interagency coordination, full disclosure, and various phases of documentation and process with corresponding comment periods – notably the Draft EIS and the Final EIS. Importantly, an EIS provides detailed discussion of significant environmental impacts and informs decision-makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment.

CN CEO Harrison has acknowledged that there is no way to achieve the benefits he sees from the CN Transaction “without introducing new traffic in less populated areas.”³⁹ An EIS would ensure that the public gets all the information it needs to evaluate the impacts of the new traffic introduced in Barrington and in other areas along the EJ&E Line.

IV. THE NECESSITY OF DEVELOPING AN EIS REQUIRES THE BOARD TO EXTEND CN’S PROPOSED PROCEDURAL SCHEDULE

CN’s proposed procedural schedule establishes a 156 day schedule with a final Board decision on April 8, 2007 if no environmental review is required.⁴⁰ Elsewhere, CN acknowledges (as it must even upon traffic data submitted for the competitive case) that environmental review is required.⁴¹ For the reasons explained above, the Board must prepare an EIS to appropriately consider the significant environmental impacts of the CN Transaction. The Board should adopt a schedule that gives it

³⁹ Harrison V.S. at 53.

⁴⁰ *CN Petition Suggesting Procedural Schedule*, STB Finance Docket 35087 (October 30, 2007), at 2.

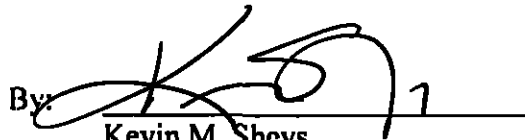
⁴¹ Application, at 33 (“As a result [of traffic shifts from Chicago to the EJ&E Line], certain of these lines will experience traffic increases that exceed the Board’s thresholds for environmental analysis, and the Transaction would therefore require preparation of either an EA or EIS.”)

sufficient time to prepare the EIS, including sufficient time for preparation of a scoping notice and preparation of a Draft EIS and Final EIS.

V. CONCLUSION

For the foregoing reasons, the Board should prepare an Environmental Impact Statement as part of the required environmental review in this proceeding, and establish a procedural schedule that gives the Board sufficient time to complete that environmental review prior to issuing its final decision.

Respectfully submitted,

By: 

Kevin M. Sheys

Edward J. Fishman

Janie Sheng

Brendon P. Fowler

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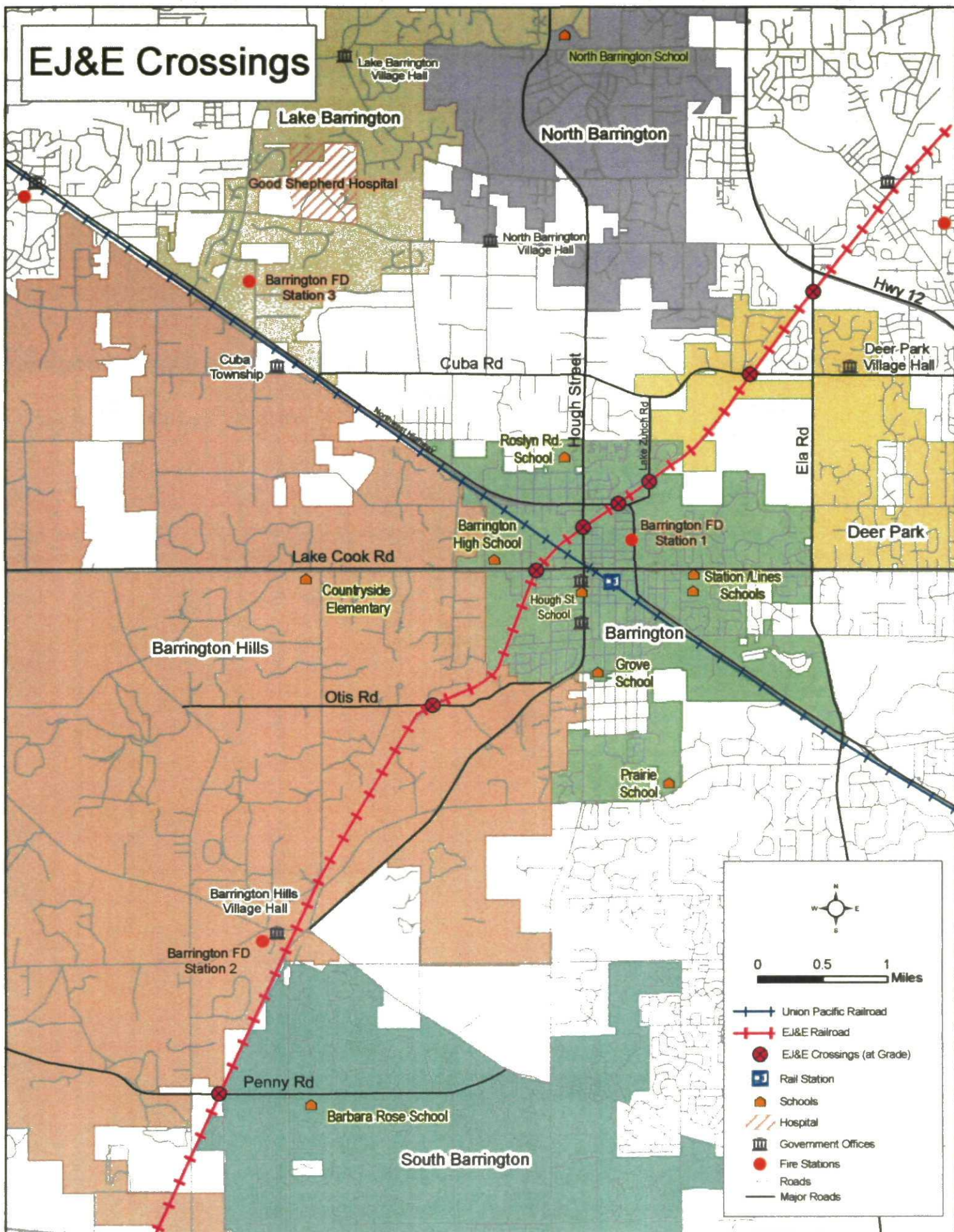
(202) 778-9000

**ATTORNEYS FOR
THE VILLAGE OF BARRINGTON,
ILLINOIS**

Dated: November 19, 2007


EXHIBIT 1

EJ&E Crossings



CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2007, I served the foregoing Reply of the Village of Barrington to the Railroad Control Application and Petition Suggesting Procedural Schedule, via e-mail and first-class, postage pre-paid mail on all parties of record.


Brendon P Fowler